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CORPORATION

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 OAKLAND DIVISION

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15 DISTRICT COUNCIL 37 HEALTH &  
16 SECURITY PLAN, DON L. COLEMAN and  
17 MAUREEN COWIE, individually and on behalf  
of all others similarly situated,

18 Plaintiff,

19 v.

20 McKESSON CORPORATION, a Delaware  
corporation,

21 Defendant.

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Case No. C06-00718 SBA

**ORDER GRANTING  
McKESSON'S MOTION TO  
DISMISS OR TO STAY**

Date: May 9, 2006

Time: 1:00 p.m.

Hon. Saundra B. Armstrong

1           Defendant McKesson Corporation's Motion to Dismiss or to Stay came before the Court  
 2 for hearing on May 9<sup>th</sup>, 2006, the parties being represented by their respective counsel. The Court  
 3 being fully advised and having considered the Memoranda, Declarations, and Exhibits and other  
 4 evidence submitted, the arguments of counsel, and good cause appearing,

5           **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss is GRANTED  
 6 as follows:

7           Under the first-to file-rule, the Court has the authority to stay or dismiss an action when "a  
 8 complaint involving the same parties and issues has already been filed in another district."  
 9 *Alltrade, Inc. v. Uniweld Prods., Inc.*, 946 F.2d 622, 625 (9th Cir. 1991). The Court finds that  
 10 this case was filed on February 1, 2006, after a similar action against McKesson Corporation was  
 11 filed in the District of Massachusetts on June 2, 2005. "Exact parallelism between the two  
 12 actions need not exist; it is enough if the parties and issues in the two actions are 'substantially  
 13 similar.'" *Alioto v. Hoiles*, No. C 04-1395 PJH, 2004 WL 2326367, at \*5 (N.D. Cal. Oct. 12,  
 14 2004) (citing *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir. 1989)). Where each of these  
 15 factors is present, the second-filed action should be dismissed or stayed. *See, e.g., VISX, Inc. v.*  
 16 *Garabet*, No. C 00-3633 CRB, 2000 WL 1929328, at \*2, \*4 (N.D. Cal. Dec. 18, 2000) (dismissal  
 17 without prejudice); *N. Am. Cas. Ins. Co. v. Encompass Power Servs., Inc.*, No. Civ.  
 18 S051587DFLGGH, 2005 WL 3453947, at \*2-\*3, \*5 (E.D. Cal. Dec. 16, 2005) (stay);  
 19 *Alibaba.com, Inc. v. Litecubes, Inc.*, No. C03-5574 MHP, 2004 WL 443712, at \*2-\*3 (N.D. Cal.  
 20 March 8, 2004) (stay).

21           The Court finds that the parties to the two cases are substantially similar. Although the  
 22 named plaintiffs are different in the two cases, the named plaintiffs are members of classes which  
 23 are defined identically in the two actions and are therefore substantially similar. *See Peak v.*  
 24 *Green Tree Fin. Servicing Corp.*, No. C 00-0953 SC, 2000 WL 973685, at \*2-\*3 (N.D. Cal. July  
 25 7, 2000). The presence of an additional defendant in the Massachusetts action does not render the  
 26 actions dissimilar for the purposes of the first to file rule. *See N. Am. Cas. Ins. Co.*, 2005 WL  
 27 3453947, at \*3 n.4. The court also finds that the issues in the two cases are substantially similar,  
 28 resting on identical factual allegations and asserting identical or analogous causes of action

1 against McKesson Corporation. *See L. Cohen Group v. Herman Miller, Inc.*, C 05-4476 SI,  
2 2006 U.S. Dist. LEXIS 2301, at \*9 (N.D. Cal. Jan. 18, 2006).

3 Therefore, the Court ORDERS that this action is dismissed without prejudice under the  
4 first-to-file rule.

5 **IT IS SO ORDERED.**

6 Dated: May 11, 2006

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8 The Honorable Saundra B. Armstrong  
United States District Judge

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